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8 UNITED STATES DISTRICT COURT  
9 NORTHERN DISTRICT OF CALIFORNIA  
10

11 LAYER2 COMMUNICATIONS, INC.,

12 Plaintiff,

13 v.

14 FLEXERA SOFTWARE, LLC,

15 Defendant.  
16

17 AND RELATED COUNTER-CLAIM  
18

Case No. Case No. 4:13 cv 02131 DMR

**STIPULATED ORDER RE: DISCOVERY  
OF ELECTRONICALLY STORED  
INFORMATION**

Action Filed: May 8, 2013

19 **1. PURPOSE**

20 This Order will govern discovery of electronically stored information (“ESI”) in this case  
21 as a supplement to the Federal Rules of Civil Procedure, this Court’s Guidelines for the  
22 Discovery of Electronically Stored Information, and any other applicable orders and rules.

23 **2. COOPERATION**

24 The parties are aware of the importance the Court places on cooperation and commit to  
25 cooperate in good faith throughout the matter consistent with this Court’s Guidelines for the  
26 Discovery of ESI.

27 **3. LIAISON**

28 The parties have identified liaisons to each other who are and will be knowledgeable

1 about and responsible for discussing their respective ESI. Each e-discovery liaison will be, or  
2 have access to those who are, knowledgeable about the technical aspects of e-discovery, including  
3 the location, nature, accessibility, format, collection, search methodologies, and production of ESI  
4 in this matter. The parties will rely on the liaisons, as needed, to confer about ESI and to help  
5 resolve disputes without court intervention.

#### 6 **4. PRESERVATION**

7 The parties have discussed their preservation obligations and needs and agree that  
8 preservation of potentially relevant ESI will be reasonable and proportionate. To reduce the costs  
9 and burdens of preservation and to ensure proper ESI is preserved, the parties agree that:

10 a) The parties will exchange a list of the types of ESI they believe should  
11 be preserved and the custodians, or general job titles or descriptions of  
12 custodians, for whom they believe ESI should be preserved, e.g., “HR head,”  
“scientist,” and “marketing manager.” The parties shall add or remove  
custodians as reasonably necessary;

13 b) The parties will agree on the number of custodians per party for whom  
14 ESI will be preserved;

15 c) The parties will exchange a list of data sources that may contain  
16 potentially relevant information but that are not reasonably accessible  
17 because of undue burden or cost pursuant to Fed. R. Civ. P. 26(b)(2)(B) to  
18 the extent such data sources exist. These data sources include back-up  
media systems or systems no longer in use that cannot be accessed. ESI  
from these sources will be preserved but not searched, reviewed, or  
produced;

19 d) In addition to the agreements above, the parties may agree that data  
20 from certain sources (a) could contain relevant information but (b) under the  
proportionality factors, should not be preserved.

#### 21 **5. SEARCH**

22 The parties agree that in responding to an initial Fed. R. Civ. P. 34 request, or earlier if  
23 appropriate, they will meet and confer about methods to search ESI in order to identify ESI that is  
24 subject to production in discovery and filter out ESI that is not subject to discovery.

#### 25 **6. PRODUCTION FORMATS**

26 The parties agree to produce documents in single-page PDF and/or TIFF file format,  
27 organized at the document level and produced with a delimited data file that contains the  
28 document boundaries. The parties expressly reserve the right to request the production of meta-

1 data and/or production of the native file. If particular documents warrant a different format, the  
 2 parties will cooperate to arrange for the mutually acceptable production of such documents. The  
 3 parties agree not to degrade the searchability of documents as part of the document production  
 4 process. No party has an obligation to make its production text-searchable; however, if a party's  
 5 documents already exist in text-searchable format independent of this litigation, or are converted  
 6 to text-searchable format for use in this litigation, including for use by the producing party's  
 7 counsel, then such documents shall be produced in the same text-searchable format at no cost to  
 8 the receiving party.

## 9 **7. DOCUMENTS PROTECTED FROM DISCOVERY**

10 a) Pursuant to Fed. R. Evid. 502(d), the production of a privileged or  
 11 work-product-protected document, whether inadvertent or otherwise, is not a  
 12 waiver of privilege or protection from discovery in this case or in any other  
 13 federal or state proceeding. For example, the mere production of privileged  
 or work-product-protected documents in this case as part of a mass  
 production is not itself a waiver in this case or in any other federal or state  
 proceeding.

14 b) Communications involving trial counsel that post-date the filing of the  
 15 complaint need not be placed on a privilege log. Communications may be  
 16 identified on a privilege log by category, rather than individually, if  
 appropriate.

## 17 **8. MODIFICATION**

18 This Stipulated Order may be modified by a Stipulated Order of the parties or by the  
 19 Court for good cause shown.

20 IT IS SO STIPULATED, through Counsel of Record.

21 **[Signatures on the Following Page]**

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1 Dated: August 26, 2013

ARCHER NORRIS

3 /s/ Chad D. Greeson

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LAYER2 COMMUNICATIONS, INC

8 Dated: August 26, 2013

BARNES & THORNBURG

10 /s/ David W. Nelson

11 David W. Nelson  
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Attorneys for Defendant/Counter-Claimant  
FLEXERA SOFTWARE, LLC.

15 **IT IS ORDERED** that the forgoing Agreement is approved.

16 Dated: August 28, 2013

17 UNITED STATES DISTRICT/MAGISTRATE JUDGE

